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Office of the Secretary
Federal Communications Commission
445 12th Street S.W. -- The Portals
Washington, D.C. 20554

RE: Media Ownership Decisions In *Docket 02-277* And Related Dockets

Dear FCC Commissioners and Staff,

I am writing to you on behalf of THE AMHERST ALLIANCE: a Net-based, nationwide citizens' advocacy group for greater media diversity. We have been active in the media ownership Dockets and are contacting you now to place new information On The Record.

Two recent developments provide evidence that *censorship* by media megacorporations is more than a purely hypothetical concern:

1. The Dixie Chicks. After Natalie Maines declared in London that The Dixie Chicks opposed war against Iraq, and were "embarrassed the President of the United States is from Texas", airplay of the group's songs was ended swiftly on many of the stations owned by Clear Channel Communications. Clear Channel is the nation's largest chain of radio stations, reaching almost one third of the nation's radio listeners.

Clear Channel senior executives claim that they did not order the ban on Dixie Chicks music. Instead, Clear Channel's leaders claim hundreds of individual station managers "spontaneously", and simultaneously, pulled all Dixie Chicks music off the air (and were not ordered to put it back). In our eyes, this account strains credulity, particularly since Clear Channel has been caught lying to the public before. In any case, the "bottom line" result -- censorship of 3 famous, and wildly popular, artists -- is the same, whether Clear Channel's leaders ordered the ban or gave their station managers a License To Kill.

This was a brutal application of concentrated market power for *purely political* reasons. There was no *profit-based* motivation for the ban: retail sales of The Dixie Chicks' music had tumbled only a little, and sales have since rebounded. Further, there was no claim that the *content* of all of the Dixie Chicks' songs had suddenly become indecent or offensive. This was punishment of The Dixie Chicks for their *personal political views.*

What if Clear Channel Communications had owned *all* of the radio stations in America?

It could happen -- if the few remaining media ownership limits are loosened enough.

If *the Federal Government* attempted to punish artists and/or others with "the wrong opinions", by outlawing their access to air time, the censorship would be seen at once as a violation of the First Amendment. Why is it any less of a violation if a *corporation* does the censoring -- and there is nowhere else on the radio dial to go? And what if the same company *also* owns the TV stations, the cable stations and The Internet?

Incidentally, Clear Channel Communications was joined in its censorship of The Dixie Chicks by Cumulus Media: the *second* largest owner of radio stations in America.

2. Broadcast News Coverage Of The FCC's Current Media Ownership Proceedings. Docket 02-277 and the related media ownership Dockets have been in a stage of heated debate, including several special regional Hearings that collectively attracted thousands of everyday Americans, for at least 6 months. In addition to attendees of the regional Hearings, Docket 02-277 alone has attracted more than 6,000 individual Written Comments -- exceeding, by a factor of almost 2, the previous record of 3,400 Written Comments in Docket 99-25, the Low Power FM Radio Service rulemaking. Within the past week, Commissioner Michael Copps and Commissioner Kathleen Abernathy have independently estimated the total number of participants in this Docket at *over 18, 000* parties. Most of them are individual citizens opposed to further media consolidation.

Substantively, hundreds of billions of dollars are at stake, not to mention the Constitution.

Yet, despite the obvious importance and visibility of the media ownership proceedings, and the length of time they have been unfolding in the public eye, coverage of them has been limited in the print media and virtually non-existent in the TV and radio broadcast media. Commissioner Michael Copps has made this point on several public occasions.

We can ask the same two questions about this "news blackout" that we asked about the ban on Dixie Chicks airplay by Clear Channel Communications and Cumulus Media.

Might this deafening silence be a response to *ratings:* to the perceived indifference of TV viewers and radio listeners? Hardly! It seems highly unlikely indeed that a story which broke a 68-year record for public participation at the FCC would fail to interest customers of the broadcast news media. Might this deafening silence instead be a response to *journalistic* standards: a judgment by broadcast news professionals that the story is not as important as others that might be covered? Less important, for example, than the latest gossip about the lawyer who represents the man who allegedly murdered Lacey Peterson? This, too, is difficult to believe.

The explanation that *is* easy to believe is this one: Radio and TV companies have deliberately overlooked a news story which would have interested their customers, and thereby helped to sustain or increase their ratings, and in turn helped to sustain or increase their advertising revenues, because *the owners* of those companies were looking *beyond* the profitability of those companies -- to the profitability of all the *other* companies they might acquire if the news story could be kept buried long enough.

Our third and final item of new information comes from the FCC itself:

3. The Strange Dismissal Of Public Opinion. We have noted, in recent public statements by Commissioners who appear friendly to further media ownership deregulation, a strange lack of response to the outcry of public opposition discussed above. Numbers *have* been dropped -- notably, references to 18,000 participants in these Dockets -- but only as an argument that the public record is now complete, with no need for the Commission to solicit more input before taking action. The *volume* of input from everyday Americans has been acknowledged, but not the substance and unanimity of that input: the fact, for example, that Commissioner Copps has reported reading and hearing literally thousands of statements by everyday Americans, without encountering even *one* that supports further media ownership deregulation.

To the best of our knowledge, this huge public cry for a halt to media ownership deregulation -- or even a *reversal* of media ownership deregulation -- has not been rebutted, or substantively confronted in any other way, by the FCC's defenders of current and/or potential media ownership deregulation. The arguments for such deregulation have continued to unfold on the basis of laissez-faire economic theory, and/or highly debatable interpretations of recent court decisions, and/or theories about the imperatives created by technological innovation. *The public's* opinion, however, does not appear to have been "factored in" at all -- not even as a point to be noted and then rebutted.

We believe some at the Commission may be viewing Docket 02-277, and the related Dockets, as a *quasi-judicial decision,* with public opinion at least theoretically irrelevant. The Commission is, after all, acting in the wake of an adverse court decision -- and with the practical certainty that its latest decision will be reviewed in court as well. Perhaps, therefore, some at the Commission have a tendency to assume that "the law -- in this case, Section 202(h) of the Telecommunications Act -- is the law", with the FCC's decisions on media ownership to be made strictly by applying statutory criteria and/or relevant precedents to *the facts* of the current situation.

As a basic proposition, we question whether the law should be, or even *can* be, totally blind to public opinion. The most sustainable bodies of law tend to be solid enough to stand for certain values consistently, but flexible enough to bend and grow with the times.

The Commission, however, does not have to accept this basic proposition in order to justify according considerable weight to the majority opinion -- in this case, the apparently *unanimous* opinion -- of Docket participants drawn from the general public. All the Commission has to do is acknowledge that public opinion is *part* of the facts to which statutory criteria and/or relevant precedents should be applied.

As we indicated to the Commission in a January 31, 2003 Legal Analysis of Section 202(h) of the Telecommunications Act of 1996 -- which was submitted as an Appendix to our February 1, 2003 Reply Comments in the media ownership Dockets -- Section 202(h) basically envisions media deregulation policy as a kind of *seesaw.*

Section 202(h) could also be expressed as an *equation:*

Marketplace Competition + Media Ownership Regulation = A Constant

The more marketplace competition exists, the less media ownership regulation is needed. The less marketplace competition exists, the more media ownership regulation is needed.

Determining how much marketplace competition exists is a *factual* assessment. That is why Section 202(h) requires an examination of media ownership *every two years* -- because facts can change over time. For the same reason, Section 202(h) directs the FCC to respond to the factual situation every 2 years by acting to "repeal *or modify"* media ownership regulation restrictions. Because facts can change over time, the statute allows the Commission to decrease *or increase* its level of media ownership deregulation at 2-year intervals, acting in response to the factual question of how much marketplace competition exists at a particular time.

The *factual relevance* of public opinion is this:

Who knows how much competition exists better than *the customers?*

The Commission has conducted a dozen studies of the current media marketplace, *all* of which have been addressed by THE AMHERST ALLIANCE in its February 1, 2003 Reply Comments. The Commission has also brought in economists, technologists, academicians and corporate CEOs -- and, *occasionally,* a citizens' advocacy group -- to speak at Workshops on this subject.

How can the Commission give weight to the views of all these observers and overseers of the media marketplace -- and then give no apparent weight at all to the views of the people who *buy* and/or use these media services, day in and day out?

Perhaps, under one economic theory or technological theory or another, these everyday customers of media services "ought" to feel they have meaningful choices in the current media marketplace. *But they don't.*

Even with virtually no broadcast news coverage, and only modest print media coverage, 18,000 customers have been displeased enough to track down information on the media ownership proceedings … to write Comments to the FCC, and/or show up at an FCC Hearing, in many cases for the first time in their lives … and to call resoundingly for a halt to, *or reversal of,* further media consolidation.

Some may believe these customers "ought" to want the kind of *technological* choices that the media industry is currently offering (most of them at a price, of course): radio versus TV versus direct TV versus cable versus The Internet (wall socket or broadband) … What the customers are saying to the Commission is that these technological choices are less important to them than more traditional choices they feel they have lost: local news versus national news, values-oriented programming versus violent and/or sexually charged "adult" programming, innovative programming versus standardized programming, diverse ideas versus a narrow cultural and ideological spectrum. Dixie Chicks music or no Dixie Chicks music -- with *the customers* making the call.

What kind of economic or technological "model" can conclude that an industry is "competitive" when the customers of that industry are reporting to the FCC, in droves, that the industry is not providing them with the choices they want?

As they say in the Shenandoah Valley:

"When a theory don't fit the facts, it ain't the facts that's got to change."

We urge the Commission to follow the facts of customer opinion -- aka public opinion -- and begin the process of *reversing* media consolidation, instead of increasing it.

Respectfully submitted,

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